



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on November 26, 1999
NOTICE OF ACTION TAKEN -- DOCKET OST-99-6400

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Air Plus Argentina, S.A.**

Date Filed: October 22, 1999

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in charter foreign air transportation of persons, property and mail between a point or points in Argentina and a point or points in the United States; and other charters in accordance with Part 212 of the Department's rules. Air Plus Argentina would conduct these services by wet leasing aircraft from Air Comet, S.A., a foreign air carrier of Spain.¹

If renewal, date and citation of last action: New authority

Applicant representative: John N. Romans (212) 797-1900

Responsive pleadings: On October 29, 1999, the Government of Puerto Rico filed a consolidated answer to the requests of Air Plus Argentina and Air Comet "enthusiastically" supporting both requests.

DISPOSITION

Action: Approved

Action date: November 26, 1999

Effective dates of authority granted: November 26, 1999-November 26, 2000

(We also approved in part and deferred in part action on Air Comet's request to wet lease aircraft to Air Plus Argentina. Specifically, we approved Air Comet's request effective November 26, 1999-January 26, 2000, and deferred action on the remainder of its request.)

Basis for approval (bilateral agreement/reciprocity): U.S.-Argentina Air Transport Agreement, as amended

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached)

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that Air Plus Argentina is financially and operationally qualified to perform the services authorized above. However, we are unable to find that Air Plus Argentina is substantially owned and effectively controlled by citizens of Argentina. Specifically, Air Plus Argentina is 97% owned by two individuals and one company. Luis & Florencia Lúpori (father/daughter) own a total of 27% of Air Plus Argentina's stock. Blinded S.A., an Argentine corporation, which owns 70% of Air Plus Argentina's stock, is 99% owned by One Side, S.A., a corporation existing under the laws of Uruguay. While we are unable to find Air Plus Argentina to be substantially owned and effectively controlled by homeland nationals, we find it appropriate to waive our ownership and control requirements in this instance, as there is nothing in the ownership and control of this carrier which would be inimical to U.S. aviation policy or interests. The carrier is properly licensed by the Government of Argentina to perform the proposed services. By memorandum dated November 17, 1999, the FAA advised us that it knew of no reason why we should act unfavorably on Air Plus Argentina's application subject to a wet lease condition.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) immediate action was required and was consistent with Department

¹ On October 21, 1999, as amended, Air Comet filed an application for a statement of authorization (99-553) under 14 CFR Part 212 to wet lease aircraft, on a long-term basis, to Air Plus Argentina.

policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the

extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:

http://dms.dot.gov/reports/reports_aviation.asp

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of

carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

(8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;

(9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;

(10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

(11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

